

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baez

Mailed: February 23, 2006

Cancellation No.92044680

TRUMP MUSIC, INC.

v.

TRUMPP TIGHT RECORDS, INC.

**Frances S. Wolfson, Interlocutory Attorney:**

On September 23, 2005, the Board sent a notice of default to respondent because no answer had been filed.

Respondent, appearing pro se, filed a declaration of use under Section 8.<sup>1</sup> This communication is non-responsive to the notice of default. However, it does show that respondent has not lost interest in the case.

The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to

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<sup>1</sup> Respondent's communication does not indicate proof of service of a copy of same on counsel for petitioner as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said communication is forwarded herewith to petitioner, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. See TBMP 317.02.

In view thereof, respondent is allowed until TWENTY DAYS from the mailing date of this order in which to file its answer to the petition to cancel and to explain why it failed to timely file an answer. The Board will otherwise enter judgment in petitioner's favor.

Respondent should note that while Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

All parties are expected to comply with all applicable rules and Board practices during the proceeding of an *inter partes* case before the Board. Thus, if respondent does not retain counsel, respondent must familiarize itself with the rules governing this proceeding. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this cancellation proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. Respondent may

access most of these materials by logging onto <http://www.uspto.gov> and making the connection to trademark materials. The files of this Board proceeding can be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. (after entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.)

Finally, the Board's manual of procedure will be helpful. The first revision of the second edition (March 2004) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).

One rule that respondent must pay particular attention to is Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel.

With the paper that it files with the Board, the party filing the paper must include "proof of service," i.e., proof that a copy of the paper that was filed with the Board was also served on the adversary or its counsel. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., first class mail); (3) the person being served and the address used to effect service; and (4) the date of service.

Also, respondent should note that any paper it is required to file with the Board must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Proceedings herein are otherwise hereby suspended.

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